



July 20, 2001

Mr. Albert D. Hammack
Town Attorney
Town of Highland Park
4700 Drexel Drive
Highland Park, Texas 75205

OR2001-3170

Dear Mr. Hammack:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149652.

The Town of Highland Park (the "town") received 12 requests for information concerning John Battaglia, Mary Jean Pearle and/or Dorrace Pearle, to include 911 tapes, arrest reports, mug shots and photographs. You inform us that a portion of the requested information has been released, but claim that the remaining portion of requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime;

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You inform us that

[o]n or about April 17, 2001, the Town charged one and the same John D. Battaglia . . . with the criminal offense of "Violation of a Protective Order." On or about May 8, 2001, the Dallas County District Attorney's Office [sic] filed criminal charges against Mr. Battaglia, accusing him of committing the criminal offense of "Violation of a Protective Order . . . a Class A misdemeanor The Offense is styled *Cause No. MA-01-3568, State of Texas v. John D. Battaglia*, and is currently pending in the Dallas County Criminal Courts at Law.

As the requested information relates to a pending criminal prosecution, we therefore find that the information you seek to withhold in exhibits A, B, C, H, and I, as well as the microcassette recording labeled exhibit J, would interfere with the detection, investigation, or prosecution of crime and thus, this information is excepted from disclosure under section 552.108(a)(1). See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, we note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. See generally *Houston Chronicle Publ'g Co.*, *supra*; Open Records Decision No. 127 (1976). Thus, you must release basic information from the documents requested.

We also note that the third page of information in exhibit H is a court document. Information filed with a court is generally a matter of public record and may not be withheld from disclosure under section 552.108. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, the third page of information in exhibit H must be released to the requestors whose requests encompassed this information. We have marked the document to be released.

The information in exhibits D, E and F consists of criminal history information subject to section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the information in exhibits D, E and F is excepted from required public disclosure by section 552.101 of the Government Code.

Finally, the information in exhibit G consists of an "Agreed Protective Order" entered in Cause No. 99-09062-Y in the 330th Judicial District Court in Dallas County, Texas. You inform us that "[a]t the time of this request, the Court has 'sealed' the Court's file for Cause No. 99-09062-Y . . ." and that in accordance with the judge's sealing of the file, the town seeks to withhold the information in exhibit G under section 552.101. We note that section 552.107(2) of the Government Code excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." In reliance on your assertion that the information in exhibit G has been made confidential by court order, we find that this information must be withheld under section 552.107(2).

To summarize, the information you seek to withhold in exhibits A, B, C, H, and I, as well as the microcassette recording labeled exhibit J, is excepted from disclosure under section 552.108(a)(1), with the exception of basic information. The third page of information in exhibit H, a court document, must be released under section 552.022(a)(17) to the requestors whose requests encompassed this information. The information in exhibits D, E and F is CHRI which must be withheld under section 552.101. The information in exhibit G, an "Agreed Protective Order," must be withheld under section 552.107(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

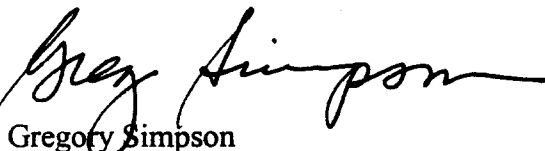
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Simpson", with a stylized flourish at the end.

Gregory Simpson
Assistant Attorney General
Open Records Division

GS/MAP/sdk

Ref: ID# 149652

Enc. Submitted documents

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